

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ABDUL-LATIF LIGHTNER,

Plaintiff,

v.

**DECISION AND ORDER**

J. PEREZ, *Nurse Practitioner Five Points Correctional Facility,*

Defendant.

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**INTRODUCTION**

*Pro se* plaintiff Abdul-Latif Lightner (“Plaintiff”) initiated this action pursuant to 42 U.S.C. § 1983 on August, 2, 2020. (Dkt. 1). Currently pending before the Court is a Report and Recommendation (the “R&R”) issued by United States Magistrate Judge Marian W. Payson recommending the dismissal of Plaintiff’s claims with prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Dkt. 56). For the reasons set forth below, the Court adopts the R&R in its entirety. As a result, the case is dismissed with prejudice.

**BACKGROUND**

As set forth in the R&R, on April 26, 2023, the Court sent an amended scheduling order to Plaintiff’s last known address. (Dkt. 56 at 1). The mailing was returned to the Court as undeliverable. (Dkt. 51; Dkt. 52). Plaintiff also failed to oppose two pending motions filed by Defendants, one of which seeks to compel discovery and one of which

seeks dismissal of the complaint. (Dkt. 56 at 1-2). Plaintiff further did not appear for a deposition noticed to occur on July 31, 2023. (*Id.* at 2).

On August 8, 2023, Judge Payson issued an Order to Show Cause why the matter should not be dismissed with prejudice for failure to prosecute. (Dkt. 55). The Order to Show Cause directed Lightner to respond by September 1, 2023, and warned him that failure to comply would “result in the recommendation of the dismissal of this action with prejudice pursuant to Fed. R. Civ. P. 41(b).” (*Id.*). The Order to Show cause was mailed to Plaintiff at his address of record. He did not respond.

On September 28, 2023, Judge Payson issued the R&R, recommending that the case be dismissed with prejudice for failure to prosecute pursuant to Rule 41(b). (Dkt. 56). Plaintiff did not file objections to the R&R.

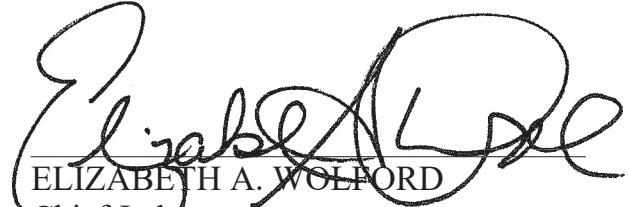
### **DISCUSSION**

Pursuant to 28 U.S.C. § 636(b)(1), the parties had 14 days to file objections to the R&R. No objections were filed. The Court is not required to review *de novo* those portions of a report and recommendation to which objections were not filed. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure [to timely] object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). Notwithstanding the lack of objections, the Court has conducted a careful review of the R&R, as well as the prior proceedings in the case, and finds no reason to reject or modify the R&R. Accordingly, the matter will be dismissed with prejudice for failure to prosecute.

**CONCLUSION**

For the foregoing reasons, the Court adopts the R&R (Dkt. 56) in its entirety and dismisses the case with prejudice for failure to prosecute pursuant to Rule 41(b). The Clerk of Court is hereby directed to enter judgment in favor of Defendant and close the case.

SO ORDERED.



ELIZABETH A. WOLFORD  
Chief Judge  
United States District Court

Dated: October 23, 2023  
Rochester, New York